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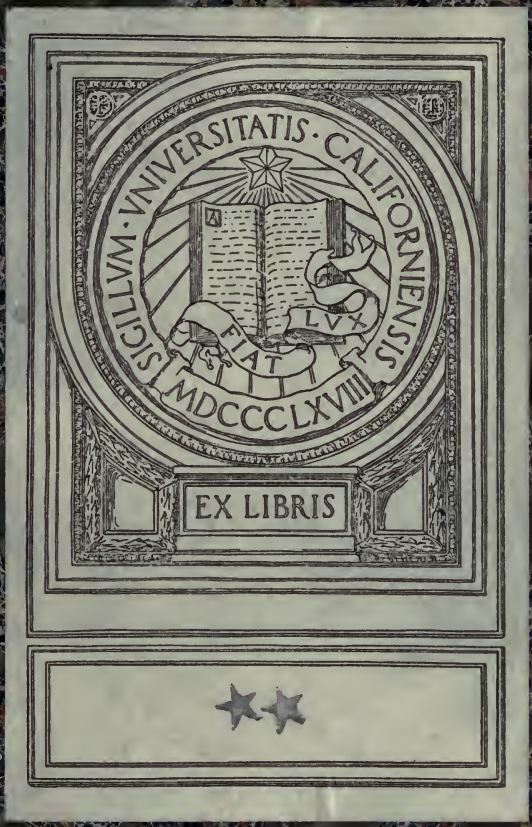
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THE CARDINAL ARCHBISHOP OF WESTMINSTER

AND

THE NEW HIERARCHY.

BY

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READER AT THE MIDDLE TEMPLE.

By Authority.

"I do sincerely promise and swear, that I will be faithful and bear true allegiance to Her Majesty Queen Victoria. . . . . And I do declare that I do not believe that the Pope of Rome, or any other foreign prince, prelate, person, state, or potentate, hath, or ought to have, any temporal or civil jurisdiction, power, superiority, or pre-eminence, directly or indirectly, within this Realm. . . . . So help me God."—STAT. 10 GEO. IV. c. 7. s. II.

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THE CARDINAL ARCHBISHOP OF WESTMINSTER AND THE NEW HIERARCHY.

The time is come when both peace and justice require that a complete and fair explanation be rendered to the country, touching the true nature of the new form given to the Roman Catholic Church in England; and an answer to the arguments and invectives which in an uninterrupted torrent have for some time past been addressed to the national feelings and prejudices—raising apprehensions in the mind of impartial and thoughtful men, that the justice of public opinion may be overwhelmed and suppressed, and a bitter and lamentable division created between the Protestant and the Catholic subjects of the Crown.

I never will believe a thing so repugnant to the nature of an Englishman, as that any one can in this country be condemned without a complete and *favourable* hearing; though, it is true, that publicity has been grudgingly and rarely given to the arguments and remonstrances on the Catholic—

politically and numerically the weaker side—in the columns of the newspapers teeming daily with every topic calculated to inflame the public mind against us, and to involve us in an irresistible and indiscriminating storm of misguided popular indignation.

In no wise discouraged by these unfavourable appearances, but confiding in the good sense and justice of my countrymen, I ask them in the name of an unpopular cause, and contrary to their prepossessions and most favourite prejudices, to suspend their judgment, and lend a not unwilling ear to the following facts and arguments.

I shall not engage in any point of theological controversy, but confine myself to legal and political grounds—shewing that no substantial reason exists for any complaint on the part of the Crown, or the nation, against the late exercise of the spiritual authority of the See of Rome, whereby her Majesty's loyal and devoted subjects, the English Roman Catholics, have received the great benefit of a canonical, and regular, and permanent Episcopacy, in lieu of a temporary and anomalous form of internal administration under prelates, titulars of foreign sees in *partibus infidelium*, and holding the office of Vicars Apostolic in England.

Let us examine the nature and effect of the Apostolic letter, creating a Hierarchy in this country with reference to the Law and Constitution of the realm, and the rights which her Majesty's Roman

Catholic subjects possess under, and by virtue of that Law and Constitution.

The relation which they bear according to the Law of the land towards the See of Rome, clearly appears from the following words of the oath, prescribed by Stat. 10 Geo. IV. c. 7, commonly known as the Catholic Emancipation Act.

"*And I do further declare, that it is not an article of my faith, and that I do renounce, reject, and abjure the opinion that princes excommunicated or deprived by the Pope, or any other authority of the See of Rome, may be deposed or murdered by their subjects, or by any other person whatsoever. And I do declare that I do not believe that the Pope of Rome, or any other foreign prince, prelate, person, state, or potentate, hath or ought to have, any temporal or civil jurisdiction, power, superiority or pre-eminence, directly or indirectly within this Realm.*"

These words are in lieu of the declaration in the oath of supremacy, that the Pope or any other foreign prince, prelate, person, state, or potentate, hath not and ought not to have any jurisdiction, power, superiority, or pre-eminence, *ecclesiastical or spiritual*, within this realm.

The legal effect of this statute is, by distinguishing between the supposed temporal and spiritual jurisdiction of the See of Rome within this realm, and excluding the former only,—to permit by the most manifest implication the Roman Catholic subjects of the Crown, to hold that the See of

Rome has spiritual jurisdiction in the dominions of the British Crown over themselves. The statute gives a clearly implied Parliamentary recognition to that doctrine, as being compatible with the oath of allegiance (with which the Roman Catholic oath contained in the statute commences), and lawful to be held by subjects of the Crown.*

Thus the legal toleration and recognition of the Roman Catholic Church in this country was established. And accordingly the office of a Vicar Apostolic exercising the spiritual jurisdiction of the Pope in England has been recognised by the highest judicial authority in the Realm, for in the Sussex Peerage case† it was held by the House of Lords (all the Judges of the land being present) that a Roman Catholic bishop holding the office of Vicar Apostolic, is *virtute officii peritus* in the matrimonial Law of Rome, and competent to give evidence of that Law, because one of the duties of that office consists in the administration of that Pontifical Roman Law to the Roman Catholic subjects of the Crown within his vicariate or district.

It is also necessary to observe that the Royal supremacy appertaining to the Ecclesiastical prerogative of the Crown only embraces and affects *the established Church.* It follows that anything done in any other religious body, considered legally as a dissenting body, and not violating any legal rights, cannot be said to touch the supremacy.

* Lord Lyndhurst, May 11, 1846. Hansard, v. 86, pp. 318, 314.

† 11. Clk. and Finel. 85.

The Queen is by law "in all causes, and over all persons, spiritual supreme:" that is to say, *in the established Church.* But the Roman Catholics being allowed to hold the spiritual authority of the Pope over themselves, cannot be within the spiritual jurisdiction or supremacy of the Crown. This must be kept in mind while considering the legal position of their Church and its acts.

The question now arises, what consequences flow from this legal status of the Roman Catholic Church in the British empire? That Church is not barely tolerated, but recognised by or known to the Law of the land, not as a mere abstraction and a mere set of speculative opinions, but as a body of persons known to the Law, and having certain essential and characteristic features, without which they would cease to be what they are, and the most prominent and (politically and legally) by far the most important of which is their adherence to the spiritual authority of the Roman See. This distinctive feature of Roman obedience and communion is indeed clearly recognised by the stat. 31 Geo. III. chap. 32, which grants relief in several important particulars to the persons previously subject to disabilities under the name of Papists, requiring them to make a declaration in these words—*I, A. B. do hereby declare that I do profess the* Roman *Catholic religion.**

Unless the Church be tolerated with the features

* Co. Litt. 391. a. Note 2. Sect. III.

essential to her proper nature and constitution, such toleration is a manifest absurdity.

One consequence of that toleration evidently is, that the Roman Catholic Church in England must possess liberty (so far as the temporal law is concerned), to manage its own internal affairs without let or hindrance, provided it violates no part of the Law of the land.

This liberty must belong to every religious body tolerated by the Law, for it is of the very essence of toleration, and is enjoyed by all churches, sects, or denominations from the Scotch Episcopalians to the Society of Friends. Thus no one could raise any valid objections if the former thought fit to declare and constitute their Primus an Archbishop, or to revive the Archbishopric of St. Andrews, or to increase the number of their diocesan bishops, or if the latter placed themselves under the spiritual government of one or more heads or rulers.

Having laid down these general principles, let us proceed to the facts, material for the consideration of the present new position of the Roman Catholic Church in England.

For nearly two centuries the Roman Catholic Church in England has been governed by Vicars Apostolic, that is to say, the Pope's Vicars—Bishops deputed by his Holiness as the immediate Bishop of the English Church, and removeable by him at pleasure. The kingdom was in 1688 divided into four districts or vicariates, over each of which

a Vicar Apostolic held episcopal jurisdiction as a Delegate of the Roman See. In the year 1840 the number of these districts and Vicars Apostolic was increased by the Pope, and the kingdom was divided into eight districts.

Under this form of polity the Church was in a mere missionary state, which has given occasion to a Protestant writer to say, that "the Romish community had not any bishops"—the episcopal character not being essential to the Vicars Apostolic, and because they "have no ordinary power over the English Romanists, being merely deputies of the Roman Pontiff, who may revoke their commissions at his own will and pleasure."*

I must candidly admit, that in one sense there is some apparent colour for this line of argument, which is a standard and favourite topic with Anglican controversial writers against us. No doubt the Ecclesiastical constitution of the Catholic body under Vicars Apostolic instead of Diocesans was utterly new in English history, and anomalous; and accordingly we have been constantly taunted with the outlandish titles of our bishops of Melipotamus, Trachis, or Samosata. No one, indeed, who has any knowledge of ecclesiastical law and history, can hold such a form of government to be otherwise than of an essentially temporary and provisional nature. To deny this position would be a betrayal of gross ignorance of the subject.

* Palmer on the Church, Part ii. chap. ii. sec. xi.

The polity in question was adopted and continued as matter of necessity—dictated by the penal statutes, by persecution, and by the prejudices of the nation and the government of this country. But no one well informed on the subject ever supposed that its duration would, or could, consistently with the constitutional principles of the Church, be prolonged beyond the operation of those causes. Let us pursue our statement of facts.

Within the last ten years the numbers of the Catholic laity and clergy, and their churches and chapels, have progressively, and, latterly, to a considerable extent increased. This has no doubt chiefly proceeded from the liberty of preaching and teaching and writing which the Catholics have of late years enjoyed. It is perfectly natural that Protestants should feel jealousy and dislike of this course of events. But are fair discussion and the free investigation of religious truth to be suppressed? If not, the result, whatever it may be, must be submitted to. That result has been decidedly favourable to the propagation of the Catholic religion in this country. I state this as a mere dry fact material to the matter in hand, meaning nothing but what is most respectful to the members of the Established Church and the Dissenters.

In the altered state of things just described, the question naturally suggested itself, whether that temporary and provisional form of government by Vicars Apostolic, adopted under circumstances of

danger and persecution, ought not to terminate? It is avowedly of a mere missionary character, and a system which the Church uses in heathen countries, such as China, or in countries where she is barely tolerated; and accordingly the erection of a regular Hierarchy has repeatedly been asked of the Holy See by the English Catholics.

That missionary state seemed unworthy of the liberality of the country. It seemed to imply a distrust of the justice and toleration of public opinion It appeared unfit, having regard to the numbers and respectability of the Catholic body here, including some of the most ancient and illustrious houses in the kingdom, both among the nobility and the landed gentry, and a great mass of persons of station, education, and wealth, besides numbers of the industrious and intelligent commonalty of the land.

A change was moreover required by the ancient, established, and constitutional principles of the Church, and for the spiritual interests of the people. I have entered into this part of the subject to shew the true reasons of what has been done, and that they regard our own Church and its internal management only, and not any political or external matters; but it would have been sufficient to say that in the lawful exercise of the liberty which the law of the land allows to the Catholic Church in England, an important change in the constitution of the clergy of that Church has been made. It does not affect any

legal or civil rights, and therefore it in no respect violates the supreme, civil or temporal jurisdiction of the Crown. And as it only regards the internal governance of a body which the law views as a dissenting body, the change in question has no reference whatever to the ecclesiastical supremacy of the Crown.

That change is the only one that could be made agreeably to the discipline of the Church,—namely, the abolition of the Vicars Apostolic, and the creation of an Archbishop and Diocesan Bishoprics and Bishops, invested with what have been incorrectly called "*territorial titles.*" Is this measure contrary to the law of the land? No. I defy any lawyer to shew that there is any difference in point of legality between the Vicars-Apostolic and the new Archbishop of Westminster and Diocesan Bishops, or that the new dioceses are in any respect distinguishable, according to the law of the land, from the eight districts or Vicariates which were regularly set out and territorially defined by Papal authority in 1840, and have existed for ten years without any one suggesting a single doubt of their legality—which, so far as regards the office of Vicar Apostolic, was recognized, as I have shewn, by the House of Lords, in the Sussex peerage case.

That form of administration, by Vicars Apostolic, was originally created in the seventeenth century, and subsequently extended in 1840, by precisely the

same authority, and in the very same way in which the diocesan form of spiritual government has now been instituted.

In the British Colonies the see of Rome has repeatedly erected Archbishoprics and Bishoprics, with so-called territorial titles, created provinces and dioceses, and appointed Diocesan Archbishops and Bishops, without the consent of the British Government, and it has never been successfully maintained that those acts of spiritual jurisdiction are contrary to law. Thus, in 1849, the Bishopric of Port Louis was created by the Pope, and Bishop Collier, Vicar Apostolic in the colony, was raised to that see. And the Pope has erected the Archbishopric of Sidney, and the Bishoprics of Adelaide and Melbourne, in Australia. In the case of the Bishopric of Melbourne, the Anglican Bishop contended that the Catholic diocesan had been guilty of a violation of the law by the assumption of the style of his see; *but the law officers of the Colony, to whom the question was referred by the Government, held that the Catholic Bishop might, without illegality, call himself Bishop of Melbourne.*

It is true that the Government has not recognized the style of Archbishop of Sidney, and Bishop of Adelaide and Melbourne, used by the Catholic Bishops of those dioceses. But the Government do recognise the *rank* of those prelates as Archbishop and Bishops, giving to them the same honorary prefixes of Lord and Your Grace which the law or

usage attributes to the prelates of the Establishment.* We may infer that those Catholic prelates are not held by the British Government to have been guilty of any offence by receiving from the Pope their style and quality as diocesans, though that style is the same which has been conferred by the Crown on Bishops of the Established Church. And our Government never made any complaint or representation on the subject to the Court of Rome.

It is, moreover, important to mention that the style and title of the Irish Catholic prelates has been recognised by the Government; for by the Commission under the Charitable Bequests Act (13 Jan. 1845), the Catholic Archbishops are styled as such, and placed above an earl, and in the instrument appointing the visitors to the new colleges, Dr. Cullen and Dr. Murray are described as the Most Reverend the Roman Catholic Archbishop of Armagh, and the Most Reverend the Roman Catholic Archbishop of Dublin. Yet these are what are called "territorial titles," and are borne and enjoyed by Prelates of the Established Church.

And the Dublin Cemetery Act, 9 & 10 Vict. cap. ccclxi. (1846), which (sect. 53) is to be deemed and taken to be a public Act, contains the following clause:—

"*And be it enacted that his Grace Daniel Murray, Archbishop, and his successors, exercising the same*

* Parl. Paper (H. of L.), No. 3, 1849, p. 8.

spiritual jurisdiction as he now exercises in the Diocese of Dublin, as an Archbishop, may, from time to time, appoint at the desire of the said governing body a clergyman of the Roman Catholic Church to officiate as Chaplain in any such burial grounds, and such Chaplain shall be licensed by and subject to the jurisdiction of the said Archbishop; and the said Archbishop shall have power to revoke any such licence and to remove such Chaplain for any causes which may appear to the said Archbishop canonical."

Here we find Archbishop Murray described as his Grace Archbishop Murray—exercising *spiritual jurisdiction as an Archbishop in the Diocese of Dublin.* His *successors* are included in the description. His spiritual jurisdiction within the *Diocese of Dublin* is recognized, and the Canon Law is *pro tanto* recognized as prevailing in the Diocese of Dublin, and to be administered by Archbishop Murray and his successors therein. And all this is the more important, because the Act could not specifically describe the Archbishop as *Archbishop of Dublin* without partially repealing Sect. 24 of Stat. 10, Geo. IV. ch. 7. But, according to Ecclesiastical law and usage, an archbishop exercising jurisdiction as such within the Diocese of Dublin, can only be described by the canonical title of *Archbishop of Dublin.* The two descriptions are legally identical, the former being an accurate definition of the latter.

But the fact of the Government not recognising

the Provincial and Diocesan, or "*territorial*" style of the Colonial Catholic Bishops is immaterial; for we do not *ask* the Government to recognise the style of Archbishop of Westminster or Bishop of Liverpool. This would hardly be a reasonable request to a Protestant government, in a Protestant country, though of course we should rejoice if they did so. We only *ask* to be allowed unmolested to adopt and use that form of administration which the spiritual welfare of our Church requires, provided we respect the law. Our Bishops ask at the hands of the Crown and the Government neither privileges nor endowments, nor assistance of any sort whatever, nor even the recognition of their style as diocesans. They only ask, and her Majesty's faithful and loyal Roman Catholic subjects demand in their name, full toleration and the protection of the law of the land.

The very terms of Stat. 10. Geo. IV. cap. 7. sect. xxiv. afford an argument, shewing that the assumption and use of the so-called "*territorial*" style and title of the newly created Catholic Archbishopric and Bishoprics are not illegal.

The words of the clause in question are as follow:—

"And whereas the Protestant Episcopal Church of England and Ireland, and likewise the Presbyterian Church of Scotland, and the doctrine, discipline, and government thereof, are by the respective acts of union of England and Scotland, and of Great Britain and Ireland, established permanently and in-

violably: and whereas the right and title of archbishops of their respective provinces, of bishops of their sees, and of deans of their deaneries, as well in England as in Scotland, have been settled and established by law; be it therefore enacted, that if any person after the commencement of this act, other than the person thereto authorized by law, shall assume or use the name, style, or title of archbishop of any province, bishop of any bisbopric, or dean of any deanery, in England or Ireland, he shall for every such offence forfeit, and pay the sum of one hundred pounds."

It is clear that the act forbids the assumption and use not of the style and title of archbishop, bishop, or dean of any place whatever, in England or Ireland, but only of any archbishopric, bishopric, or deanery belonging to the Established Church. *Expressio unius est exclusio alterius.* And we may infer* that the assumption and use of new ecclesiastical titles not belonging to the Establishment is lawful. The inference is obvious. And accordingly the late Pope Gregory XVI., erected about ten years ago, a new bishopric in Ireland, that of Galway, and appointed the Rt. Rev. Dr. Blake to that see, without any opposition from the Government of the day.

Mr. Charles Butler, in his Historical Memoirs of the English Roman Catholics, (vol. ii. p. 251.) mentions the very remarkable fact that throughout the reign of Elizabeth and James I., it was the wish

* Gov. and Comp. for Smelting Lead, v. Richardson, 3. Burr. 1344—R. v. Cunningham, 5. East. 478.

of their friends in power, that they should obtain from Rome the appointment of regular bishops in ordinary. The creation of a hierarchy,—the measure now so violently attacked, is indeed a concession on the part of the Holy See to the English Roman Catholics, because it places their spiritual affairs directly in the hands of permanent English ordinary Bishops, under an English Archbishop, instead of mere delegates removable at pleasure, and thus Mr. Butler states, that it was so generally understood that the appointment of bishops would be acceptable to Elizabeth and her ministers, that some of the Catholics objected to it as a measure desired by their adversaries, and a modification of the direct power of Rome in this country.

And here it is necessary to observe that the clause in the late Papal letter, abrogating all contrary customs, &c. in the Catholic Church in England, is simply equivalent to the words familiar to English lawyers, *any law, custom, or usage, to the contrary, notwithstanding*, and was requisite, at least in point of form, to annul all dispositions and enactments made for our Church in England by the Holy See, with reference to its late form of ecclesiastical government, and to provide that the new Bishops might not be incumbered with the old English Catholic customs and canonical laws, which belonged to a different state of things, when that Church held possession of the old archbishoprics and bishoprics.

We come now to the often repeated argument, that the Archbishopric of Westminster and the Diocesan Bishoprics have been erected, and the Cardinal Wiseman, and the other prelates appointed to them by a *foreign Prince and Potentate*, and that therefore the rights of the nation and the sovereignty of the Crown have been violated. This argument has been almost answered by anticipation.

It is worth nothing, unless our opponents can shew that the acts of authority in question are temporal or civil, as contradistinguished from acts of spiritual jurisdiction, and for this reason. I have shewn that the Law of the land allows Roman Catholic subjects of the Imperial Crown to hold that the Pope has spiritual jurisdiction, at least over themselves, within the realm, though he is also accidentally a temporal foreign Prince or Potentate. It is indeed absurd to say that that spiritual jurisdiction is illegal as regarding Her Majesty's Roman Catholic subjects, when the law, by clear and manifest implication, allows them to hold that the Pope has spiritual jurisdiction over the Catholics within this realm.*

Besides, they would cease to be *Roman* Catholics, (their legal designation since the Stat. 31 Geo. III. chap. 32.) if they did not hold that the Pope has such spiritual jurisdiction. And to say that the Roman Catholic Church is not illegal in Her

* Stat. 10 Geo. IV. ch. 7. sect. 2.

Majesty's dominions, and yet that a fundamental necessary doctrine of that Church is illegal, would be a gross and monstrous contradiction. If we are not allowed by law to hold a doctrine, without which we should cease to be Roman Catholics, it obviously and inevitably follows that the law does not permit us to be Roman Catholics at all. Which is absurd. Persecute us, drive us out of the realm altogether, and into perpetual banishment, but do not hold out to us the delusive phantom of an apparent toleration, and then deny us the liberty to hold that doctrine on which the very existence of our Church, as the Catholic Church, built upon the rock of Peter, and bound to his successor the supreme head and centre of unity on earth, most undeniably depends.

If the lawfulness of the spiritual authority of the Pope over the Roman Catholics within the realm be admitted, (which no rational man can as matter of law deny), it is clear that no power except the Pope can erect and create Roman Catholic Bishoprics here, for he is the only primary source of spiritual and ecclesiastical jurisdiction in our Church. And Rome alone can give to the Bishops of that Church *mission*. The Vicars Apostolic derived all their authority from that same foreign power the Pope, and in this respect they were not distinguishable from the new Bishops.

The erection of Bishoprics is an integral and essential part of the exercise of the Pope's spiritual

authority, as the only primary source of spiritual or ecclesiastical jurisdiction, and the centre of Catholic unity on earth. How then can it be said that by erecting Bishoprics in England, the Pope has exceeded his legally recognised and admitted spiritual power, and exercised a civil or temporal jurisdiction or authority ?

The Pope has not created Bishoprics in the Church established by law. He has not created bishoprics to which any legal, civil, or political right is incident. And here the present case materially differs from some which have been cited from the period before the Reformation; in which disputes arose between the See of Rome and the Crown, with respect to the patronage of offices, and the exercise of jurisdiction in the Church, then established as the *Church of the State.* The Pope has only created certain offices in a Church, which is *in the eye of the Law a dissenting body*,—and as much a voluntary society, as any other incorporated body enjoying no legal privileges or franchises. And the *theological* claims of our Church do not alter the case. They belong to religion, and are within the inviolable rights of liberty of conscience, over which no human power can exercise jurisdiction. The claim of our Church to be *the* Catholic Church, is matter of dogma and belief, to be met by argument, and not by the strong arm of the law, or by meetings, addresses, and agitation. It

has nothing to do with temporal or legal supremacy. —Assuming that a regular Hierarchy is requisite for the spiritual welfare of our community in England, by whom could that Hierarchy be created? Ought we to have applied for Bishops to the Crown? If not, whence could the creation of our archbishopric and bishoprics proceed, except from Rome? And if such creation by the Pope be not forbidden by the law of the land, then what ground of complaint is there against our Church? It will not surely be contended that the Pope could omit to adopt a measure required, in his Holiness's opinion and that of his advisers, for the service of God and his Church, because the position of the British Government with reference to the Holy See, precluded the Crown from giving to that measure a direct sanction. The British Government ignores the Pope diplomatically, except as "the Sovereign of the Roman States,"* and ought not to complain that his Holiness did not ask a consent, which the Crown could not give,—as though there were a Concordat subsisting between the See of Rome, and her Majesty.

We here find an answer to those who argue that as in Catholic countries new bishoprics are not erected by the Pope without the concurrence of the Government, therefore the same rule must obtain in England. The diversity between the two cases

* Stat. 11 and 12 Vict. ch. 108.

is manifest. In those countries, the Catholic Church is the established—or the chief established, or an established religion of the state, and the relations between and the legal rights of the Holy See and the government are regulated by express agreement, and express concession of the Pope—by Concordat. Besides, the creation of a bishopric in a Church established by law, affects civil, and legal, and political rights, incident thereto. These are reasons which do not exist here. In England, the Roman Catholic Church is, as I have already said, on the same legal footing as the different bodies of Protestant dissenters. The State gives her nothing, and can therefore ask nothing of her, any more than of the Wesleyans or the Society of Friends. And, indeed, the direct interference of the head of the Anglican Church with the internal government of the Catholic Church, seems as absurd on Protestant, as on Catholic grounds. But it would be still more absurd to conclude, that therefore we must remain to the end of the world without diocesan bishops.

The same argument shews how inapplicable to the case in hand, are precedents from the history of England before the Reformation, when the king gave investiture of temporalities to Catholic Bishops,—for those prelates held land of the Crown *in capite*, and sat in Parliament as Spiritual Lords. And so the old statutes of Provisors, and præ-

munire before the reign of Henry VIII. related to a totally different state of things, and those since that time are inapplicable to the present case.

The notion that the erection of a Bishopric is an act of civil and temporal jurisdiction or sovereignty, arises from a confusion of ideas.

In the first place, why have new spiritual titles been created in England by the Popes? Because the Stat. 10 Geo. IV. ch. 7, forbade the use of the old titles, except by the clergy of the Protestant Church by law established; and though it would not have been difficult, by legal astuteness, to avoid the penal consequences of that prohibition, it seemed best, out of respect for the civil power, that the Roman Catholic Prelates should have new titles. It remains to be seen, whether the creation of such new spiritual titles, and the assignment of dioceses to the Prelates bearing them, be an encroachment on the temporal sovereignty of the civil power.

There is no authority whatever for holding that a bishopric with the style of a Metropolitan or diocesan bishop, such as Archbishop of Westminster, or Bishop of Birmingham, is *per se*—a temporal dignity or an office—or a dignity within the meaning of the Common Law, which makes the Crown the fountain of honour and office. It is a notion arising from an imperfect knowledge of the subject.

Because the prelates of the Protestant establishment have the office and dignity of Lords of Parlia-

ment, and enjoy a certain legal rank and precedence by the temporal law; therefore, it is supposed that a diocesan bishop is necessarily clothed with what the law denominates a dignity, and an office, which must emanate from the Royal Prerogative. But this is not so, and it is difficult to conceive a greater error in history and in law.

Read the VIIth Book of Hooker's Ecclesiastical Polity, especially §. V. and other passages where he speaks of Bishops "*with restraint*," that is to say, Bishops of particular places. He says that St. James was made *Bishop of Jerusalem*, and Evodius, *Bishop of Antioch*, with something like Divine direction of the Holy Ghost. At §. VIII., speaking of bishops' territories, he defines a see and a diocese thus: "The Church where the bishop is set, with his college of presbyters about him, we call a see, *the local compass of his authority* we term a diocese." And he says not one word of the notion, that neither a see nor a diocese could be created except by the civil power, or that a bishop *with restraint*—that is to say, of a particular city, is a dignity or an office, which must emanate from the Regal Prerogative. And with regard to Metropolitans, he says: "They which dream that if civil authority had not given pre-eminence to one city more than another, there had never grown an inequality among bishops, are deceived; superiority of one bishop over another would be requisite in

the Church, though that civil distinction were abolished." Everywhere he speaks of bishoprics, sees, and dioceses, as spiritual offices and districts perfectly distinct from the sanctions of the civil power. They existed before the reign of Constantine. And it is matter of undeniable history, which no one will hesitate about, who has so much as looked over the pages of a common book, such as Bingham's Antiquities (Book II. chap. 1.) that the Patriarchs, Metropolitans, and Diocesan Bishops of the Eastern Church, were entitled Bishops of particular places, —such as of Ephesus, of Alexandria, and of Antioch, and of Smyrna, even before the reign of Constantine, and when the Church was unrecognized and even persecuted by the civil powers. The purely spiritual office of an archbishop, or a bishop, of a particular place, as contradistinguished from the temporalities and the temporal incidents, such as a seat in Parliament, sometimes annexed thereto by the civil power, is indeed far more ancient than any dignity known to the common law.

And let me remind the learned reader, that Cruise says nothing of Bishops,* and Selden does not include Bishops in his celebrated treatise of Titles of Honour.

It is for these reasons a strange error to compare the creation of an Archbishop of Westminster to that of a Duke or Marquis of Westminster. The

* Cruise on Dignities, Cruise Digest. tit. xxvi. Dignities.

former is a purely spiritual dignitary in his own Church. He claims to be an Archbishop—not in the Established Church, but of his own Church. He neither claims nor asks anything at the hand of the civil power or the law. He is perfectly willing that the law should ignore him altogether, for he claims nothing that in any way touches or affects legal or civil rights. But the latter, if he be not Duke or Marquis of Westminster *by law*, is nothing but an impostor, because the titles of Duke or Marquis are mere creations or creatures of the temporal law.

The Catholic Bishops of the new sees are in the same position with reference to the law as the Protestant Bishops in Scotland. The latter are called, in their community, Bishops of divers places, such as Edinburgh, Moray, Elgin, and Brechin ; *but the law knows them not as such.* They have no legal *status.* But who could compare them to persons calling themselves, without legal title, Earl of Edinburgh or Moray, Elgin or Brechin ? The absurdity of such a parallel is manifest.

They are described in Stat. 3 and 4 Vict. chap. 33, as "exercising episcopal functions within some district or place in Scotland," and their local titles have no legal existence. Their titles are therefore precisely analogous, so far as the law is concerned, to those of the new Catholic Bishops.

The mere fact that in England there are legal

Bishops—Prelates of the Protestant Establishment recognized by the law, and whose right, style, and title are established by law—is immaterial to the question, unless it be shewn that the law also forbids the assumption and use of the style of Archbishop or Bishop of any place whatever, in England and Wales, except by the Prelates of the Establishment; and this is clearly not law. And, indeed, the existence of Bishops in Scotland is more repugnant to the Presbyterian constitution of that part of the United Kingdom, than the toleration of Roman Catholic Bishops is to the Anglican Church Establishment, which, as appears by the Bidding Prayer, only professes (I do not use the word in an offensive sense) to be a branch of the Catholic Church by law established in these realms. As to the argument, that our Hierarchy is a schismatical violation of the rights of the Established Church, it is altogether theological, and therefore beside my purpose. The law of the land holds no such position. It may, however, be as well to observe, with respect to that purely ecclesiastical argument—that there were Catholic Bishops of Montreal, Quebec, and Louisiana, before the creation of Anglican Protestant Bishops of those places. Are the Protestant Bishops usurpers? And if the Archbishop of Westminster be an intruder in the see of the Bishop of London, then is the Anglican Bishop of Gibraltar an intruder in the see of the Catholic Bishop of Malta. But let us return to the legal and political view of the case.

The United States of America furnish a very important authority in support of my argument. There are within the territories of that Republic four Roman Catholic Archbishops and their suffragans, each bearing the style and title of Archbishop or Bishop of some one of the American towns. They are the Archbishop of Baltimore—the Bishops of New Orleans, Louisville, and Philadelphia; the Archbishop of New York—the Bishops of Boston, Charleston, Richmond, and Cincinnati; the Archbishop of St. Louis—the Bishops of Mobile, Vincennes, Dubuque, Nashville, Nachez, Galveston, Pittsburgh, Little Rock, Milwaukie, and Chicago; and the Archbishop of Walla Walla — and the Bishops of Albany, Cleveland, and Buffalo. All these Bishoprics were erected by the see of Rome without the sanction of the Government of the country. Thus (to give the most recent instance) the Archbishop of New York has just been created, and the Archbishop, the Most Rev. Dr. Hughes, has received the pallium, or badge of metropolitan jurisdiction, from the Pope without the expressed consent of the civil power. Is it probable, that whereas all dignities are against the constitution of that Democracy, these Bishoprics would be tolerated by the Government of the United States, if they were dignities created in America by a foreign power? The supposition is absurd. The Americans understand the true nature—the purely spiri-

tual character of these ecclesiastical offices, and accordingly they never have imagined that the erection of Roman Catholic Archbishoprics and Bishoprics within their territories was any violation of their constitution or their sovereignty, of which they are as jealous guardians as any nation on earth.

Let us now proceed to examine what has been the practice of the British Legislature and the Crown, bearing on the question in dispute, whether the erection of a Diocesan Bishopric, with the style and title of a place within a given territory, and the assignment of a diocese to the Bishop, be or be not an act of temporal or civil jurisdiction, power, superiority, or authority therein ?

The Crown has a few years back created, under the provisions of Stat. 5 Vict. ch. 6, a Bishopric in parts beyond sea, where her Majesty's writ runneth not—to wit, at Jerusalem. And by the warrant under the Royal sign manual and signet for the consecration of Dr. Alexander, the Bishop appointed to that see, it is provided as follows, that is to say, "*And we are graciously pleased to assign Syria, Chaldea, Egypt, and Abyssinia as the limit within which the said Michael Solomon Alexander may exercise spiritual jurisdiction, pursuant to the said Act* (5 Vict. chap. 6) *subject nevertheless to such alterations in their limit as we from time to time may assign.*" Here we find a diocese regularly assigned by the British Crown in a foreign country, accord-

ing to Hooker's definition of a diocese, already stated in these words: "*the local compass of his* (a Bishop's) *authority we term a diocese.*" And the Crown expressly reserves to itself, from time to time, to alter the limits of that foreign diocese. All this was done without the consent or concurrence of the various civil powers governing Syria, Chaldea, Egypt, and Abyssinia; and throughout the whole proceedings there is no mention of any such consent being sought or obtained!

I cannot admit the relevancy of any such quibble as the distinction between the style of Bishop of Jerusalem and that of Bishop at Jerusalem, except as a matter of form, the latter title being utterly new and unprecedented in ecclesiastical law and history. The plain, honest question is this—Did or did not the Crown constitute and erect a bishop's see and bishopric in foreign parts, at Jerusalem, and assign to the bishop thereof a *diocese* or district (not merely certain *congregations*), comprising Syria, Chaldea, Egypt, and Abyssinia, countries out of the British empire, reserving to itself power from time to time to alter the limits of that foreign diocese?

In truth, the notion of what has been called a *territorial title* of a bishopric is an error utterly without the support of any authority whatever in law or in history. It is a mere feudal idea misapplied. The correct view of this point appears clearly from Hooker's definition of a see, given above.

"*The Church where a Bishop is set we call a see.*" The Bishop is styled the Bishop of the Church, which is called his see. But here Church does not mean a material building, but a community of churchmen in a given place. So the Bishop of the Church at Ephesus is Bishop *of the See of Ephesus*, and according to unvarying ecclesiastical usage, from the earliest ages downwards, he is styled *Bishop of Ephesus*. To call him Bishop at Ephesus, or of the Church of St. John or St. James at Ephesus, would be simply an unmeaning absurdity, founded on a mere formal and verbal distinction, without any substantial difference.

A Catholic Bishop is not and cannot be Bishop of a territory, but Bishop of a flock. He is not set over land or dominions, but over persons. Thus no Catholic Bishop is or can be entitled Bishop of a territory. He takes his spiritual title from *his see*—that is to say, "*the Church where he is set*:" as for instance Ephesus or Westminster. And "the Church" here means *the flock in communion with him at that place*. And that Church gives a name to the Bishop and his diocese.

If it be said that Bishop Alexander was set over Protestants only, I answer that the Cardinal Archbishop of Westminster is set over Roman Catholics only; though, as the former no doubt desired that all persons within his diocese would become Protestants, so the latter hopes that the inhabitants of his archdiocese will hasten into the fold of the Roman

Catholic Church. The two cases are, therefore, in this respect not distinguishable.

And it cannot be alleged that Bishop Alexander was set over British congregations only (though even if it were so, the case bearing on the power of erecting Bishoprics in foreign parts would not be altered), for he was also empowered by the Royal warrant to "exercise spiritual jurisdiction over such other Protestant congregations as may be desirous of placing themselves under his authority." These words, no doubt, apply primarily to Prussian Protestants, but they unquestionably include *all* and *any* Protestants within the diocese, even natives of Syria, Chaldea, Egypt, and Abyssinia. This view of the meaning of the warrant is established beyond dispute to be correct by the "*Statement of proceedings*" published expressly "*by authority*" at the time, which alleges (p. 6. 8.) that the Bishop was to receive into his Church *Jewish and Gentile converts.* Those converts would be natives of the country, and subjects of the civil power thereof, or at least not British subjects. The duty of the Bishop was therefore partly what has been termed aggressive. As for the fact that Jerusalem is a place *in partibus infidelium*, and that there were native Bishops of different Eastern sects there already, it is quite immaterial and irrelevant to the legal and political question which we are considering, though it has some bearing on the theological problem whether and how

the Protestant Church of England was entitled to send a missionary Diocesan Bishop to the East.

We may conclude that the case of the Anglican Bishopric of Jerusalem is exactly in point, and it establishes that the Legislature and the Crown of England hold that there is nothing unlawful, or in any respect wrong in the act of erecting a Bishopric and appointing a Bishop, and assigning to him a diocese in a foreign country, without the consent of the Government of that country.

The Statute 5 Vict. chap. 6. would suffice by itself to establish this position. That statute empowers the Archbishops of Canterbury or York to consecrate British subjects, or subjects or citizens of any foreign kingdom or state to be Bishops in any foreign country, whether such foreign subjects or citizens be or be not subjects or citizens of the country in which they are to act. And this the act authorises, without the consent of the sovereign or government of such foreign subjects or citizens. And the statute enacts that "such Bishop or Bishops so consecrated may exercise within such limits" (that is to say, within such diocese) "as may from time to time be assigned for that purpose in such foreign countries by her Majesty, spiritual jurisdiction over the ministers of British congregations of the United Church of England and Ireland, and over such other Protestant congregations as may be desirous of placing themselves under his or

their authority." Not one word is said in the Act of any consent to be obtained from the Government of those foreign countries.

Under and by virtue of this Statute, 5 Vict. chap. 6, it is fully lawful and competent to the Archbishops of Canterbury or York to consecrate a red Indian, or a black man from the coast of Africa to be Protestant Bishop of Rome, and her Majesty may assign to him for a diocese the States of the Roman Church, with spiritual jurisdiction over all Protestants and converts, present and future, within the territorial limits so assigned by Her Majesty's warrant. I have put an extreme case which may provoke a smile; but it logically exemplifies the spirit and principle of the Statute, which seeks to impress on the Protestant Anglican Church a character of universality, extending its episcopacy beyond the British empire, and is an authority of the highest nature for the position that by creating an Archbishop and Diocesan Bishops, forming a Catholic hierarchy in England, the Pope has not assumed temporal jurisdiction, power, or authority within the realm, nor touched the Royal prerogative and the exclusive sovereign rights of the Crown and the Legislature.

Under that same statute, the Crown has created another Bishopric, deriving its title from a place within Her Majesty's dominions, but invested with pastoral functions more extensive than that title imports. I mean the Anglican Bishopric of Gib-

raltar. We have to consider not words but things, not form but substance. Now it cannot be denied that the Anglican Bishop of Gibraltar has committed to him, by his Church and the Government of this country, the pastoral episcopal care of all Protestants, whether converts or otherwise, in communion with that Church, or who may place themselves under his authority, not only in Gibraltar and Malta, but also in Italy. And accordingly he has made one or more visitations in the latter country, especially at Florence, Naples, and Rome, and has exercised episcopal functions in the Holy City, having a staff surmounted by a mitre and cross borne before him as a mark of his authority.

No doubt he is primarily sent to Protestants, as the Archbishop of Westminster is primarily sent to Roman Catholics. But is the Bishop of Gibraltar exclusively sent to Protestants? No. He is too honest a man to say so. The Homilies of his Church call the Church of Rome the "*idolatrous Church, a foul filthy old withered harlot, for she is indeed of antient years.*" And the Bishop of London has lately publicly stated in answer to an address from a part of his clergy, that the Church of Rome "*undisguisedly teaches to her members the duty of giving to the creature that worship which is due to the Creator,*"—plainly implying thereby, though not venturing to say, that the Church of Rome positively enjoins idolatry specifically as such, thus committing an unequivocal act of the most impious apostasy!

Can any man doubt that it would be the duty of the Anglican prelate as such, if he spoke the sentiments of the bench of Bishops, to tell a Roman consulting him that the Papacy is an imposture, and the Roman Church idolatrous, and soul-destroying, and that her children are bound, following the light of the Gospel, to desert her, and become Protestants, and enter his communion? He could not with consistency say otherwise, unless what he believed to be true in England, he believed to be false at Rome. Nothing, indeed, but necessity or prudence should have prevented him from saying and preaching this everywhere in Rome where he could obtain a hearing. How then can it be said that exercising his pastoral functions and authority in Rome, they include exclusively, though they apply primarily to Protestants only? Has he received, and has he ordained no Italian converts?

In point of real substance then, his diocese extends to Italy and to Rome itself. And be it observed, that there is no native Protestant community at Rome, and all the Protestants there are either travellers and sojourners, or foreign residents.

The truth is, that wherever the Roman Catholic Church and the Protestant Anglican establishment co-exist, they must be *theologically* antagonistic to each other for this simple reason, that they differ diametrically on essential points of faith, and therefore one or the other teaches false doctrine. The extract I have just made from the published reply

of the Bishop of London, proves, at any rate, in what light these differences are regarded on one side. Whatever the Catholic Church may say or think of Protestants, certainly she says or thinks nothing worse than what it appears the Bishop of London thinks of her. I state this merely as a fact, and without any intention of entering into the province of the controversial theologian.

The Bishops of the Establishment, who have solemnly engaged to "drive away strange and erroneous doctrine," believe themselves bound to oppose the progress of what they denominate Romish error. On the other hand, the Cardinal Archbishop of Westminster and his suffragans hold that the entire kingdom ought to embrace the faith of our Church as the only true religion. Let this great issue be fairly tried. Let it be tried by the test of argument, and not by that of force or political power. We in the mean time accept, without uneasiness, our present legal status and position, though under serious temporal and worldly and social disadvantages, when compared with the Church of the State and the Law.

We submit ourselves as good Englishmen and loyal subjects to the Law of the land. But we claim full liberty so long as we do not infringe the Law and the rights of our fellow-countrymen, to adopt such measures of internal ecclesiastical arrangement and administration as are best in accordance with the constitutional principles of our Church,

and most conducive to its prosperity and the welfare of our religion. We claim this liberty in the name of that honest spirit, which Englishmen familiarly call *fair play*. We claim it in the name of true toleration and religious liberty, which consist in something more than the mere absence of persecution, and the possession of equal civil rights. They require also that religious bodies be allowed free action within their own communion, and touching their own affairs, without external interference by the State or by popular clamour, provided they do not act contrary to law, nor attempt to violate the rights of others.

We claim, therefore, the liberty of developing the internal means of our own Church, respecting at the same time the opinions of others and the laws of the country. Our Church polity is founded on Episcopacy. The Roman Catholic Church is the most Episcopal religious body in the world. We therefore claim as essential to our religious liberty, the full development and entire toleration of our Episcopacy, in that form which the constitution of our Church and the traditions of Christian antiquity from the Apostolic ages prescribe. It is no fault of ours if the stately and venerable aspect of that Episcopacy gives jealousy or umbrage. We can only protest that we mean no disrespect to the majority of the nation, nor anything in the slightest degree incompatible with the most devoted loyalty to our beloved Sovereign.

The titles of our Hierarchy give them no legal rank, precedency, privilege, or power. They ask nothing of the Crown or the Legislature, beyond what is given as matter of right to every denomination of religionists and to every sect. They ask no favour. They take their stand upon the Law of the realm,—not indeed interpreted according to the notions of those, who when they find the Law against them, appeal to what they call its spirit—(a device utterly subversive of liberty and sound jurisprudence)—but expounded in the books, and by the Queen's courts, and judges.

There is little danger that the present popular feeling against them will continue, or produce any serious results. Truth and common sense must prevail in the end.

I do not believe that the people of this country will be led away by the old intolerant cry of *No Popery*. The Dissenters, and the enlightened and liberal members of the Establishment, will repudiate or distrust those who call in the secular arm to strike one of the parties to a theological disputation. They will view with suspicion certain expressions of zeal for the Royal prerogative, mingled with theological positions apparently derived from our Church, and by no means of a Protestant tendency.

And practical men must see, that if penal laws be provided for the Clergy of the Catholic Church in England, it will be difficult not to include Ireland within their enactments. It is not easy to stop in

the course of interference with the internal affairs of religious bodies. Once let the old hatred of Catholicity—the *No Popery* spirit—have full swing even for a short time, and a single Parliamentary success, and who shall say where it will stop? The United Protestant Church of England and Ireland by law established, may claim the same protection in one part of the kingdom as in the other, and, indeed, the Irish Roman Catholic Prelates who hold the very identical titles which the law gives to those of the Establishment, stand on more delicate ground than the Archbishop of Westminster and his suffragans. And the Irish Catholics will not be slow to perceive, that when the English Roman Catholic Hierarchy is put down by a penal statute, it will be an evil hour for their own Church. That would be a great step towards the restoration of Protestant ascendancy. The aggravation of the difficulties of Irish politics, which cannot fail to result from such a measure, and from the spirit dictating it, encouraged and strengthened by success, must be sufficiently obvious.

But the good sense and good feeling and justice of the country must deaden and extinguish the agitation, when the first ebullition of mistaken zeal has subsided, and the sensible and unprejudiced part of the community have seen the real merits of the case. Zealots and partizans, and those whose political opinions are unfavourable to toleration and full religious liberty, will continue to argue or de-

claim and agitate. They will be listened to with that respect, which many among them deserve, or else neglected. But the distinction between the political and legal and the theological part of the case once seen and appreciated, and the real nature of the pretensions and character of the new Catholic Prelates once understood,—men of business and unprejudiced persons, both in and out of Parliament, will retire from the contest, leaving the Roman Catholics to adopt such form of administration in their Church, as seems to them most calculated for its advantage and their own. Then angry invectives and imputations against us will cease or be disregarded, and the country will return to its wonted peace, and the useful discussion of matters tending to benefit in common every class of her Majesty's subjects.

THE END.

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